

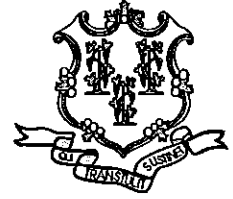


**STATE OF CONNECTICUT
DEPARTMENT OF CHILDREN AND FAMILIES**

Public Hearing Testimony

Judiciary Committee

March 14, 2012



S.B. No. 310 AN ACT CONCERNING THE REMOVAL OF INDIVIDUALS FROM THE STATE CHILD ABUSE AND NEGLECT REGISTRY

The Department of Children and Families supports S.B. No. 310 - An Act Concerning the Removal of Individuals from the State Child Abuse and Neglect Registry.

This bill establishes a removal procedure for individuals whose names have been placed on the Child Abuse and Neglect Registry (registry) by DCF for at least five years, to apply to have his or her name removed by showing good cause for removal. Under the proposal, the burden is on the applicant to prove: (1) the applicant has been rehabilitated; (2) the person has accepted personal responsibility for the acts or omissions that resulted in his or her being included in the registry; and (3) a bona fide need to remove his or her name. DCF suggests adding a fourth requirement of having the applicant submit at least two supporting letters from persons with knowledge of the applicant's successful rehabilitation. The bill also requires DCF to develop an application form. If DCF denies the initial request, the applicant is then entitled to appeal it further at an administrative hearing. Applicants who continue to be denied can reapply for removal, but must wait at least two years before doing so. Under current law, any applicant who has exhausted his or her administrative appeals can appeal to Superior Court.

It is important to note that this bill does not automatically remove anyone from the registry. Rather it establishes a due process right for individuals to demonstrate to DCF that they have rehabilitated themselves, and do not pose a risk to children. The Department would utilize the same process afforded individuals pursuant to the administrative hearings permitted under section 17a-101k of the general statutes and sections 17a-101k-1 through 17a-101k-16 of the Regulations of Connecticut State Agencies. That regulation includes specific criteria for placement of a person on the registry that could be easily adapted to apply to removal of a person from the registry. It is also important to note that the DCF registry is separate and distinct from the Connecticut Sex Offender Registry maintained by the Department of Emergency Services and Public Protection pursuant to sections 54-250 through 54-261 of the General Statutes. Placement on the DCF registry is a civil/administrative determination, while placement on the state's Sex Offender Registry results from a criminal conviction.

DCF Child Abuse and Neglect Registry

DCF regulations define the registry as the "confidential data file maintained as part of the department's computerized database, of persons who have been substantiated as individuals responsible for an act or acts of child abuse or neglect and for whom the commissioner has

made a determination, based upon a standard of reasonable cause, that the individual poses a risk to the health, safety or well-being of children."¹

Use of the Registry - Historical Perspective

Prior to May 1, 2000: All individuals who were "substantiated" as perpetrators of child abuse or neglect following a DCF investigation were placed on the registry. There were no notice or due process procedures in place prior to May 1, 2000.

From May 1, 2000 - October 1, 2005: DCF established a process to provide notice to individuals who were "substantiated" following an investigation of child abuse or neglect. The federal Child Abuse Prevention and Treatment Act² (CAPTA) required states to establish such a procedure if the information in the state's child abuse and neglect registry was being used for purposes of employment or other background checks.

Since October 1, 2005: Connecticut law was changed to require that in order for anyone to be placed on the registry, DCF must determine, following an agency investigation, that not only was the individual found to have abused or neglected a child, but also, poses a risk to child health, safety, or welfare³. The administrative appeal process was also delineated for the first time in statute⁴ and regulations⁵.

Legal Criteria

- 1) Determination of child abuse and neglect following an agency investigation - Reasonable cause standard.
- 2) Appeal at administrative hearing level - Fair preponderance of the evidence submitted at the hearing.

DCF Substantiation Appeal Statistics

Year	2005	2006	2007	2008	2009	2010	2011
Number of substantiation hearings	216	483	650	615	499	402	375
Number of allegation addressed in those hearing *	458	1,080	1,511	1,353	1,143	945	871
Number of reversals of allegations	247	404	458	417	389	275	265
Percent reversals	54%	37%	30%	31%	34%	29%	30%

* Each hearing may have several allegations addressed.

Note 1. The statistics are based on "closed date."

Note 2. Because 2005 was the first year the database was created and used; the numbers for that year may be less than complete.

¹ § 17a-101k-1 (14) of the Regulations of Connecticut State Agencies

² 42 U.S.C.A. § 5101 et. seq.

³ Public Act 05-207

⁴ § 17a-101k of the Connecticut General Statutes

⁵ §§ 17a-101l-1 through 17a-101k-16 of the Regulations of Connecticut State Agencies

Recommended Substitute Language

The Department believes that the bill's language should be incorporated into section 17a-101k of the General Statutes as new subsections, so that it is clear that the appeal and hearing procedures of that section apply.

The Department recommends the following substitute language that incorporates the provisions regarding supporting letters, deletes the requirement for separate regulations, and makes other technical modifications:

"(NEW) (a) Any individual whose name has been placed on the state child abuse and neglect registry established pursuant to section 17a-101k of the general statutes may file an application with the Department of Children and Families, on such form as the department prescribes, for removal of such individual's name from the registry. The department shall include in such form a provision that allows the applicant to indicate good cause for removing the applicant's name from the registry. Such good cause shall include, but need not be limited to, the following: (1) rehabilitation of the applicant; (2) the applicant's acceptance of personal responsibility for actions or omissions that resulted in the applicant's name being placed on the registry; (3) a bona fide need for removal of the applicant's name from the registry; and (4) at least two letters in support of the application, each from persons with knowledge of the applicant's successful rehabilitation.

(b) Such application may be filed not earlier than five years after the date of the final decision, as defined in section 4-166 of the general statutes, that resulted in the placement of the applicant's name on the registry.

(c) The Commissioner of Children and Families may grant such application upon finding good cause. If the commissioner denies an application filed in accordance with subsections (a) and (b) of this subsection, the applicant shall be entitled to a hearing in accordance with chapter 54 of the general statutes.

(d) Any applicant whose application is denied after a final decision, as defined in section 4-166 of the general statutes, may reapply in accordance with subsections (a) and (b) of this section, without limitation, not less than two years after the date of such final decision. Such application shall indicate good cause that has occurred since the date of the final decision."

<p><i>H.B. No. 5363 AN ACT CONCERNING INTERVIEWS OF CHILDREN BY THE DEPARTMENT OF CHILDREN AND FAMILIES DURING INVESTIGATIONS OF CHILD ABUSE AND NEGLECT</i></p>

The Department of Children and Families offers the following comments regarding H.B. No. 5363 - An Act Concerning Interviews of Children by the Department of Children and Families During Investigations of Child Abuse and Neglect.

This bill, as currently written, would clarify the circumstances under which DCF could interview a child in a child protective investigation without parental consent. Under current law, DCF has

the legal authority to interview children without parental consent in cases in which the parent or guardian is the alleged perpetrator of physical abuse.

The Department believes that section 17a-101h of the general statutes **needs to be rewritten** to permit interviews with a child without parental consent, in certain limited circumstances. There are situations where there are very real potential threats to the well-being of children, including cases where the allegation being investigated by DCF involves neglect rather than abuse. This is particularly true in cases involving families with a domestic violence history.

The language of bill does not provide these necessary safeguards and DCF **offers the following substitute language** to address these circumstances:

"Section 1. Section 17a-101h of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

Notwithstanding any provision of the general statutes, any person authorized to conduct an investigation of abuse or neglect shall coordinate investigatory activities in order to minimize the number of interviews of any child and share information with other persons authorized to conduct an investigation of child abuse or neglect, as appropriate. A person reporting child abuse or neglect shall provide any person authorized to conduct an investigation of child abuse or neglect with all information related to the investigation that is in the possession or control of the person reporting child abuse or neglect, except as expressly prohibited by state or federal law. The commissioner shall obtain the consent of parents or guardians or other persons responsible for the care of the child to any interview with a child, except that such consent shall not be required when the department has a documented compelling reason to believe [such parent or guardian or other person responsible for the care of the child or member of the child's household is the perpetrator of the alleged abuse] that seeking such consent would place the child at imminent risk of physical harm. If consent is not required to conduct the interview, such interview shall be conducted in the presence of a disinterested adult unless immediate access to the child is necessary to protect the child from imminent risk of physical harm and a disinterested adult is not available after reasonable search."